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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Local Exchange Carrier's Rates,
Terms, and Conditions for
Expanded Interconnection for
Special Access

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93-162
CC Docket No. 93-162

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FEDERAL COMMUNICATIONS COMMISSION
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**RESPONSE OF
THE ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES
TO THE DIRECT CASES OF THE LOCAL EXCHANGE CARRIERS**

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SUMMARY

The Association for Local Telecommunications Services ("ALTS"), the national trade association representing the competitive access providers, files these Comments in response to the collocation tariff investigation Direct Cases of various local exchange carriers ("LECs"). These Direct Cases were filed in response to the Federal Communications Commission's Order Designating Issues for Investigation¹ which sought from the LECs the information necessary to determine the just and reasonableness of the LECs' filed collocation tariffs.

As with the initial filing of their collocation tariffs, the LECs have again failed to provide the essential data for thorough evaluation of the tariffs' rates, terms and conditions, and most importantly, have now in many cases deliberately refused to comply with the Commission's Designation Order. As a result, key elements of the LEC tariffs, which ALTS and its members have challenged, remain unjustified and the Commission and interested parties are foreclosed from meaningful analysis.

The failure of the LECs to provide information clearly required by the Commission in the context of a proper investigation of their tariffs must be treated seriously. The Commission has, after careful deliberation and lengthy proceedings, adopted a landmark policy intended to bring important benefits to consumers through expanded interconnection and increased local competition. The achievement of fair and reasonable tariffs for special

¹Order Designating Issues for Investigation, DA-93-951 (released July 23, 1993) ("Designation Order")

access collocation is a lynchpin in the achievement of the Commission's policy objectives.

The instant investigation is essential to the achievement of such tariff arrangements.

Based on the almost total defiance exhibited by the LECs in provisioning expanded interconnection as a just, reasonable, and nondiscriminatory service, the Commission has no choice but to require the LECs to promptly file compliant information, deny the LECs any opportunity to unduly gain from their actions by staying the effectiveness of all rate flexibility granted as part of this proceeding, and impose material and meaningful sanctions on those LECs displaying the most serious non-compliance.

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**RESPONSE OF
THE ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES
TO THE DIRECT CASES OF THE LOCAL EXCHANGE CARRIERS**

The Association for Local Telecommunications Services ("ALTS"), pursuant to the Commission's Designation Order¹ hereby submits comments responding to the Direct Cases filed in the captioned proceeding by Ameritech Operating Companies ("Ameritech"), Bell Atlantic Telephone Companies ("BA"), BellSouth Telecommunications, Inc. ("BS"), GTE Telephone Operating Companies ("GTE"), NYNEX Telephone Companies ("NYNEX"), Pacific Bell ("Pacific"), Southwestern Bell Telephone Company ("SWB"), and U S West Communications, Inc. ("USW")(collectively, the local exchange carriers, or "LECs").

ALTS and many of its members have participated actively in the proceedings leading to this investigation and filed comments concerning the initial captioned tariff filings.² ALTS members will be among the first parties in the country to seek collocation arrangements with LECs pursuant to the Commission's Collocation Order.³ ALTS

¹ Order Designating Issues for Investigation, DA-93-951 (released July 23, 1993)("Designation Order").

² Opposition of the Association for Local Telecommunications Services to Proposed Local Exchange Carrier Collocation Tariffs, filed March 15, 1993 ("Opposition").

³ Expanded Interconnection with Local Telephone Company Facilities, 7 FCC Rcd 7369 (1992)("Collocation Order").

members bring to this proceeding their significant experience with collocation arrangements with interexchange carriers, and with LECs at the state level. This experience enables them to assess the practical implications of the charges, terms and conditions proposed by the LECs, as well as their reasonableness. The fundamental public interest objectives established by the Commission in its Collocation Order depend entirely on whether the LECs make collocation available on fair and reasonable terms. ALTS seeks by these comments concerning the LEC direct cases to ensure that the Commission's objectives for local competition, which are integral to the Commission's overall telecommunications policies going into the next century, can realistically be met under the LEC collocation tariffs.

I. INTRODUCTION

The original collocation tariffs filed by the LECs presented rates, terms and conditions that would almost prohibit the use of collocation and severely impede the development of access competition. Those tariff filings confirmed that the LECs intended to pursue the massive resistance to collocation and increased competition that they evidenced in their comments and petitions for reconsideration in the Expanded Interconnection proceeding. In its Opposition to the collocation tariffs, ALTS pointed out many respects in which the filed tariffs were deficient. These deficiencies included unnecessary and excessive recurring rate elements, excessive non-recurring charges, and terms and conditions that created undue barriers to entry and imposed unreasonable costs and restrictions on collocators. Based on the ALTS Opposition, similar filings of other parties, and its own review, the Commission partially suspended the tariffs and ordered an

investigation.⁴ The Commission's Designation Order framed the specific issues for investigation and directed the LECs to provide substantial and detailed cost and other information in support of their filed tariffs. With limited exceptions, the LECs have continued that defiant posture by filing direct cases that are designed to frustrate, rather than further, the analysis of their rates and terms by the Commission and interested parties.

It is crucial to recognize that the issue in this investigation is whether the LECs' collocation tariffs will fulfil Commission's Expanded Interconnection policy. In this important respect it is vastly different than other tariff investigations. These collocation tariffs are not really "carrier-initiated" tariffs; they have only been filed because the Commission mandated expanded interconnection and directed the LECs to file collocation tariffs. Under these circumstances, the Commission cannot adopt the same standards of review that it normally follows when a carrier files a tariff for a service that it wants to offer.

The Commission's Expanded Interconnection policy is premised on the conclusion that significant public benefits will occur from expanded interconnection and collocation. These benefits will not occur because collocation represents a good idea in theory, but only if collocation is actually put into practice.⁵ There will be no expanded opportunities for competition, increased opportunities for diversity, service and technical innovation, and lower, cost-based prices if collocation does not in fact occur.

⁴ In the Matter of Ameritech Operating Companies, et.al, DA 93-657, released June 9, 1993 ("Investigation Order").

⁵ It is significant that LEC claims of sizeable amounts of their local revenues at risk from expanded interconnection, besides being vastly exaggerated, are clearly predicated on the unstated assumption of collocation being introduced in almost every central office, and virtually immediately upon its availability.

If the LECs are permitted to offer collocation only under rates and terms that do not permit economic collocation, it will not occur as intended by the Commission. Tariffs that preclude collocation on realistic, workable, and economic terms will frustrate the Commission's Expanded Interconnection policies and their intended benefits just as effectively as if the LECs refused altogether to offer collocation on any terms.

While the Commission chose not to impose extensive and detailed prior standards on the LEC's collocation tariffs, in order to give them maximum opportunity to fashion their own proposals, that does not mean that there are no workable and meaningful standards by which to judge the adequacy of the tariffs. Logic, common sense, and industry experience make clear that, if the tariffs are to work, not only must they reflect the reasonable interests of the LECs but also they must reflect the following:

1. Collocators cannot go elsewhere for this collocation capability. This is a case of pure monopoly.
2. The principal collocators that will provide the competition are themselves carriers, subject to the Commission's jurisdiction, with obligations to their users based on the Communications Act.. They have the same incentives as the LECs to operate in a responsible manner respectful of the needs and requirements of their co-carriers.
3. Collocators employ and will use skilled, experienced personnel, often trained in part by the LECs on whose premises collocation may occur.
4. The users of collocators such as ALTS' members will surely demand, and have a right to expect, that their services will not be subject to disruption.

5. Many collocators will be smaller, even start-up, companies that do not have "deep pockets" to fund uneconomic collocation or to overcome unduly high barriers to entry. The opportunity for such new entry is a key element in the Commission's policy.

6. Collocators must be able to plan for their services and cannot accept an unstable platform for that service, even if it is provided on the premises of another carrier.

7. Collocators cannot pay more for the LEC space, equipment, and personnel than the LECs charge to their end users and still be expected to be able to compete effectively for the business of those users.

8. Finally, the LECs have been defiant in their resistance to expanded interconnection and collocation, and that fact, coupled with their incentive to frustrate this policy, must be taken into account in precluding unnecessary opportunities for abuse.

Reviewing the LEC Direct Cases in the light of these considerations makes clear that they are woefully deficient and that the tariffs will not, as framed, promote competition. With a few minor exceptions, the LECs' responses to the Investigation and Designation Orders is more defiance than justification, with their defence coming in the form of confusing and incomplete data, inadequate or non-responsive explanations, and occasional tirades about their right to protect their interests and the Common Carrier Bureaus "overreaching" in asking them to explain and justify their tariffs.

Their failure to provide full and clear information in compliance with the

requirements of the Commission's Designation Order is particularly egregious since every day that they are able to delay the achievement of fair and just collocation tariffs will advance their parochial, anti-competitive interests and forestall the realization of the Commission's expanded interconnection objectives. Under these circumstances, the public interest demands that the Commission take aggressive action to (i) require full and prompt compliance with the Designation Order and impose immediate remedies, including meaningful and material sanctions, against companies found not to be in compliance; (ii) prescribe fair and just rates and rate structures based on the best information that is available, with the burden on the LECs to justify any rate element or rate level that is not plainly reasonable and fully justified as both cost-based and non-discriminatory; and (iii) prescribe revisions to LEC terms and conditions that will ensure that non-rate provisions are not permitted to create unreasonable barriers to entry or undue burdens.

II. THE DIRECT CASE SUBMISSIONS OF THE LECs EXHIBIT WIDESPREAD NON-COMPLIANCE WITH THE COMMISSION'S DESIGNATION ORDER, MERITING SERIOUS REMEDIAL ACTION BY THE COMMISSION.

In its Suspension Order⁶ the Commission found numerous cases of excessive LEC charges and terms and conditions that imposed unjustified burdens and restrictions on interconnectors. Based on these findings, the Commission partially suspended the tariffs and ordered an investigation. At the core of this investigation is the Commission's recognition that "excessive LEC connection or contribution charges would hinder the development of competition, depriving customers of the associated efficiency gains."⁷

⁶ In the Matter of Ameritech Operating Companies, DA-93-657, released June 9, 1993 ("Suspension Order").

⁷ Collocation Order, 7 FCC Rcd at 7422.

In ordering the investigation of the LEC tariffs, the Commission found that the LECs had failed to justify numerous aspects of their rates and terms and conditions.⁸ Accordingly, the thrust of the Designation Order was to require the LECs to provide full and complete data and explanations concerning numerous elements of their collocation tariffs. As discussed below, the Direct Cases fail in significant respects to provide the required data. As a result, key elements of the LEC tariffs, which ALTS and its members have challenged, remain unjustified, and the Commission and interested parties are foreclosed from meaningful analysis.⁹ To remedy this failure, the Commission must require full and complete information to be submitted promptly, and impose other sanctions as well.

A. The LECS Have Failed To File Required TRP Information, Disabling The Review Of Their Rates.

One of the most important ingredients of the required supporting information is the Tariff Review Plan ("TRP"), which was required to include systematic and comprehensive cost information regarding fourteen stipulated common functions. The purpose of the TRP is to enable an "apples-to-apples" comparison of the costs of the LECs, at a highly disaggregated level. Each LEC was required to "categorize its rate elements into the [stated] functions," and, where a rate element includes costs for more than one function,

⁸ For example, with respect to overhead loadings, the Commission found that "None of the LECs provide the required justification for these overhead loadings." Collocation Order at para.33.

⁹ Given the defiant and intransigent attitude reflected, for example, in the Direct Case filed by USW, it is not surprising that the LECs have resisted providing meaningful data just as they have resisted providing fair and efficient collocation: "Any attempt by the Bureau to now claim that such information was inadequate for it to determine the reasonableness of US West's rates might well be deemed, depending upon the outcome, arbitrary and capricious." USW at 6.

to "partition the costs among the relevant functions, derive illustrative rates based on the partitioned costs, and display the partitioned costs and illustrative rates on the relevant TRP pages." Designation Order at para. 16, 17.

Several LECs failed in major respects to file the required TRP information. BA filed TRP information for only four functions: Entrance Facility Space Function (2), DC Power Generation Function (9), Cross-Connection Cable and Cable Support Function (11), and Cross-Connection Equipment Function (12). For the other ten functions, BA claimed that these functions did not involve investment-related items, and therefore, that no TRP information was required. BA at 1. However, BA then failed to file other, alternative presentations that demonstrated in detail the development of their costs for their non-recurring costs ("NRC"). NYNEX and GTE adopted similar approaches, filing TRP information for only five and ten of the fourteen functions, respectively.

There can be no excuse for such blatant disregard of the clear requirements of the Designation Order. The fact that numerous other LECs at least attempted to file the TRP information in the form set by the Commission establishes beyond any doubt that the requirement for complete information was clear.¹⁰ Thus, one can only conclude that these three companies specifically intended to impede the ability of the Commission and interested parties to analyze the reasonableness of their rates. This conclusion is reinforced by the fact that the LECs have much to gain, in the way of anti-competitive benefit, from impeding the Commission's investigation.

¹⁰ See, BS, Exhibit 1.

B. The LECs Have Failed To Provide Data Or Other Justification Supporting Key Cost and Rate Factors, and Terms and Conditions, In Contravention of the Designation Order.

1. Overhead Loadings.

One of the major factors driving the excessive rates set forth by the LECS is their use of large and unsubstantiated, and probably unsustainable, overhead loadings. As noted above, in setting the tariffs for investigation the subject of overhead loadings was one of the Commission's major concerns, and the absence of justification for overhead loadings resulted in the partial suspension of the LECs' rates.¹¹ Accordingly, in its Designation Order the Commission established very specific requirements for information regarding overheads, including information to enable a clear comparison of the overhead loadings used for collocation rates to those included in "retail" DS1 and DS3 rates.¹²

Despite this clear mandate, numerous LECs failed to provide the required information, foreclosing effective analysis of virtually all their rates. The following are provided by way of example :

- Ameritech did not provide overheads for its DS1 and DS3 services, on the grounds that it is "not appropriate" to draw the comparison that the Commission has specifically required. Ameritech at 10. Thus, the only comparison provided by Ameritech is what it describes as the ratio of "costs" to "rates" for its DS1 and DS3 services, without specific explanation of how "costs" were determined or defined.

¹¹ Suspension Order at para. 34. "Based on the record before us, it is impossible for us to find the overhead loadings included by the LECs to be reasonable." *Id.* at para. 33.

¹² Collocation Order at para. 22(c)(1).

- USW failed to provide the comparable overhead loadings for its DS1 and DS3 services, claiming that they are "not relevant." USW at 37-39. Instead, USW provides only overhead factors for "generic DS1 and DS3 Services" based on calculations of what it describes as the ratio of total revenues for all rate elements in each fixed period divided by total costs of said elements. This information does not satisfy the Commission's requirement and appears designed to obscure the very comparison that the Commission has stipulated is necessary to determine the reasonableness of the rates.
- GTE provided no explanation of its DS1 and DS3 "overhead factors," merely providing a table "taken from 1992 Annual Charge Factor Studies." GTE at 8 and Attachments 5 and 6.
- Pacific failed to comply with Commission requirements in the area of Administrative Expenses, by failing to define the actual administrative costs caused by the various collocation functions. Instead, Pacific has used percentage factors to assign this claimed expense to investment. In fact, Pacific explicitly states that in some cases costs unrelated to collocation have been included: "... the TRPs for recurring collocation functions will show dollar amounts on the advertising line, However, no advertising costs will be incurred for collocation..." Pacific, Appendix page Q.1.¹³

2. Other Matters.

In addition to their pointed failure to provide the information required by the

¹³ Assignment of costs without any claim of actual causal connection must be rejected.

Commission regarding overhead loadings, the LECs have failed to provide adequate data or explanation to support analysis of the reasonableness of their rates and tariff requirements in numerous other respects. These examples¹⁴ include:

- Ameritech failed to support its very high floor space rates by providing book (embedded) and market values for floor space, or comparing such values with its Means data, as required by the Designation Order (para. 22(f)(1)). Ameritech at 13.
- USW refused to provide information to justify depreciable lives as required by the Designation Order at p. 10, para. (b)(2), contending that this proceeding "is an inappropriate forum in which to require such a justification." USW at 30.
- SWB failed to provide a comparison of its interconnection rates to any of its detailed DS1 and DS3 services, arguing that the Commission's mandated five year amortization period for collocation rates "will erroneously show higher effective monthly rates for companies, like SWB, that have chosen to recover the costs of collocation using non-recurring charges to cover capital investment.... In addition, existing DS1 and DS3 rates correctly reflect the economies of scale being achieved by LECs in the provision of these services." SWB at 9.

¹⁴ Numerous additional examples are presented and discussed in sections III. and IV. of these Comments, infra.

C. These Serious Instances of Non-Compliance Will Impede The Investigation and Enable the LECs to Continue Charging Unlawful Rates, and Therefore Warrant Strong Remedial Measures.

The failure of the LECs to provide information clearly required by the Commission in the context of a proper investigation of their tariffs under Sections 4(i), 204(a), 205(a) and 403 of the Communications Act of 1934, as amended, must be treated by the Commission very seriously. The Commission has, after careful deliberation and lengthy proceedings, adopted a landmark policy intended to bring important benefits to consumers through expanded interconnection and increased local competition. The achievement of fair and reasonable tariffs for special access collocation are a linchpin in the achievement of the Commission's policy objectives. The instant investigation is essential to the achievement of such tariff arrangements. In failing to provide specifically mandated information to the Commission in the context of such an investigation, the LECs are not merely expressing their disagreement with the Commission's policy decision, but are acting in contempt of clear Commission orders.

Moreover, in doing so they are impeding and delaying the conduct of the investigation in a manner that inures directly to their benefit. Such delay enables them to put into effect, or continue in effect, rates and regulations that are likely to be determined to be unlawful, and in so doing to retard the development of competition, harming both competitors and consumers. Unless the Commission is prepared to countenance such blatant disregard of its orders and of the public interest, it must take strong action in response to this serious non-compliance.

First, the LECs should be required to promptly file compliant information, in order

that the investigation may proceed. Other parties should, of course, have an additional opportunity to respond to the additional information provided.

Second, since the contempt is clear, the LECs must be denied any opportunity to gain unduly by their actions. The Commission has previously granted to the LECs significant additional pricing flexibility based on their argument that collocation will so benefit their competitors that they will suffer serious revenue erosion unless they are simultaneously given new pricing options. It would make a mockery of the Commission's rationale, and materially undermine the credibility of its policies, if the LECs were permitted to act on that increased flexibility while frustrating the investigation of their tariffs.¹⁵ Thus, the Commission should promptly stay the effectiveness of all rate flexibility granted to the LECs.¹⁶

Third, in view of the seriousness of this matter, the Commission should impose sanctions on those LECs displaying the most serious non-compliance. Such firm action is fully justified by the scope of the non-compliance and the resolutely defiant attitude that has been taken by some LECs intent on forestalling collocation-based competition.

In view of the demonstrated intransigence of the LECs, only through strong remedial actions such as these can the Commission ensure the credibility of its decision making and the achievement of its broad policy objectives regarding the advancement of local competition.

¹⁵ See, the Applications for Review filed July 19, 1993, and September 3, 1993, with respect to the Common Carrier Bureau's approval of the zone density pricing plans of several LECs in DA-93-726, and DA-93-869.

¹⁶ At the very least, such a stay should be in effect until the Commission is satisfied that full compliance has been achieved.

III. THE LECs CONTINUE TO PROPOSE COLLOCATION RATES THAT ARE UNREASONABLE, DISCRIMINATORY, AND NOT COST JUSTIFIED. THE COMMISSION MUST PRESCRIBE NEW AND REASONABLE RATES IF ITS EXPANDED INTERCONNECTION POLICIES ARE TO BE ACHIEVED.

A. The LEC Tariffs Reflect Rate Concepts Antagonistic To The Basic Rationale For Expanded Interconnection And The Development Of Access Competition To Serve The Interests Of End Users.

The Commission's basic rationale for special access collocation is to enable CAPs to compete for a significant share of the access market by selling services that require access to the LEC central offices. Providing this opportunity for CAPs to compete for a broader segment of the access market, and neutralizing one element of the LEC bottleneck by means of fair and reasonable interconnection arrangements, will also enable the Commission to depend more heavily on competition, rather than regulation, to determine the prices users pay, permitting more economically efficient pricing of services. It is manifest that CAPs will not be able to compete effectively if the LECs are permitted to set monopoly rents for the collocation arrangements while setting their own prices to users of their DS1 and DS3 services based on "competitive" factors. Yet, that appears to be precisely how the LECs have approached the tariffing and justification of their collocation arrangements.

The Direct Cases filed by the LECs demonstrate that their filed rates and regulations are antagonistic to the Commission's objectives. Their attitudes and approaches are typified by USW, which explains its very high rates by saying that "[it] did not structure this offering at [its] own initiative" and therefore it has a right to "minimize capital recovery risks" by having large up-front non-recurring rates. USW at 66. Similarly, virtually all of the LECs justify their space rates and terms and conditions by continually

referring to the practices of the commercial real estate market.¹⁷ The weakness of that line of reasoning is apparent. The "real estate" in question is monopoly real estate.¹⁸ The latitude to set their own terms that commercial landlords have exists because private investors have risked their own capital to establish the building. The market will determine, through competition with other building owners, whether their terms are reasonable. Such landlords do not have captive space. Moreover, they are not guaranteed a particular level of revenue, which the LECs contend is their right, at least with respect to collocation. Even the Commission has rejected such a guarantee: "Setting new service prices to satisfy the net revenue test would produce prices targeted to ensure that the carrier will not lose revenues through the offering of the new service over an extended period of time. This standard is inconsistent with a regulatorily mandated new service designed to subject the LECs to the rigors of increased competition." Collocation Order at para. 129.¹⁹

Thus, the FCC's intent is to use collocation to establish a neutral competitive field so as to permit, and even promote, competition downstream of the interconnection point.

The fact that this interconnection is mandated by Commission order, rather than a matter of

¹⁷ See BA at Attachment B, p. 20. SWBT at 11.

¹⁸ While ALTS does not condone BS' attempt to use embedded investment for land use and buildings to determine the space price here, there can be no challenge to BS' view of the captive position it occupies in this regard: "Market Value was not estimated Market Value is defined as the most probable price in terms of money that a property would bring if exposed for sale in the open market in an arm's length transaction between a willing seller and a willing buyer.... It is the opinion of BS that there exists no similar leased properties which are comparable to central offices." BS at Exhibit A, p.3.

¹⁹ As the FCC noted in rejecting such a guarantee, "in this case, the net revenue test would function like a very high contribution element designed to recover lost contributions to LEC overheads -- a result that we reject..." Id. at note 295.

the LECs' independent election, does not operate to relieve the LECs of the necessity to adopt rates and regulations for the collocation services that are no less favorable than those that they offer to their access customers.²⁰ If the LECs cannot demonstrate such neutral pricing, then their collocation rates and terms must be restructured. As discussed below, it is readily apparent that their filed tariffs contain excessive rates which have not been justified by the standard of non-discrimination and impartiality that the Commission's policy requires.²¹

B. LEC Charges For Key Tariff Elements Are Plainly Too High To Promote Collocation-Based Competition and Must Be Revised To Be Reasonable, Non-Discriminatory, And In Compliance With The Commission's Policy Objectives.

1. Overhead Loadings Remain Excessive And Unjustified.

The Commission has made clear its concern that the very high rates established by the LECs for collocation are in significant part attributable to the overhead loadings used,

²⁰ BA's view of impartial rates is clearly demonstrated, when it contends that term discounts are entirely appropriate for "customers" of its "Competitive DS1 and DS3 services." BA has not extended such discounts to interconnectors. BA at Attachment B, p. 16.

²¹ USW displays its view of neutral rates when it urges that any "fair" comparison of the costs of its DS1 and DS3 services to enhanced interconnection "would include the savings a CAP realizes when utilizing a LEC's channel terminations to reach an end user (accessed through a collocation arrangement) versus the cost to a CAP of constructing its own facilities to the end user." USW at 43. Thus, USW considers that it is justified in charging collocation rates to CAPs that are equal to what it would cost a CAP to replicate its own central office and local loop. This position, which implies a duplication of local facilities on a grand scale, is hardly what the Commission intended and would not serve the interests of end users, who would be asked to pay for the duplicate facilities rather than being permitted to see the most efficient use made of the bottleneck facilities already in place and for which end users have paid already. In addition, USW justifies the need to set high, and up front, charges on the basis that it has followed a pricing approach in which collocators lease their space month-to-month and are not required to make longer term commitments. USW at 69-70. By this sleight of hand, USW creates for itself economic risks that are unnecessary, and at the same time sets up a defense against offering to collocators the kinds of term and volume discounts that it offers to its end user customers.

and that these overhead loadings may not be consistent with the overhead loadings reflected in LEC rates for their DS1 and DS3 services. Accordingly, the Designation Order requires that each LEC provide information that will enable a full and complete comparison of the overhead loadings proposed for collocation rates to the overhead loadings reflected in rates for DS1 and DS3 services, by service and including volume and term discounts. Designation Order at para. 22(c)(1). Any differentiation, and any use of "closure factors," must be explained and justified. The information presented by the LECs in every case fails to establish that the LECs have used overhead loadings for collocation services that do not exceed those used in their DS1 and DS3 services facing competition.

Although the LECs describe their approach to costing and overhead loading using different terminology, it seems clear that all of the LECs have adopted the same basic concept. Ameritech describes its process as taking the revenue requirement and dividing it by direct costs in order to achieve a "closure factor" that "represents the joint and common costs or overheads for the service category."²² BA performs the same calculation as Ameritech, dividing a revenue requirement by investment to obtain an "Overhead Loading Factor."²³ NYNEX explains its uses differently, stating that it is using a Fully Distributed CCF, which loads in all company overheads. NYNEX at 15. According to NYNEX, 33% of the CCF is overhead.²⁴ SWB explained that closure or overhead costs were identical and the "result of rate minus incremental cost or revenues minus the sum of incremental

²² Ameritech at 12.

²³ BA at Exhibit 9.

²⁴ See also BS, Exhibit 2 at 29; USW 34-40.

unit costs." SWB at 4.

Each company argues that these overheads are fully consistent with the overhead factors used in developing their DS1 and DS3 rates. However, each also has refused to provide the information required by the Designation Order to support this claim. Moreover, there is clear evidence to the contrary.

Although NYNEX contends here that the correct standard for overheads is that of Fully Distributed Costs ("FDC")²⁵, NYNEX has gone on record in defense of its term and volume discounts advocating that an entirely different standard should be applied.²⁶ There NYNEX devotes 22 pages and two attachments to arguing that the correct measure for those rates is what NYNEX describes as Average Variable Cost ("AVC"): that rates above AVC recover all relevant costs and are not predatory. They show there that for high capacity special access services, AVC is only 41% of FDC.

The other LECs have taken a similar approach to justifying their competitive DS1 and DS3 rates.²⁷ Pacific supports its volume and term discounts by calculating an average variable cost, rather than FDC, using cost factors that plainly do not attempt to allocate

²⁵ Indeed, NYNEX has even asserted that: "The channel termination for both DS1 and DS3 in NET and NYT is priced higher than Fully Distributed Cost and therefore provides contribution to other NTC services. The Expanded Interconnection Office Channel termination, however, is priced at fully distributed cost and therefore does not provide contribution to other NTC services." NYNEX at 16.

²⁶ Ex Parte letter from Kenneth Rust, Director, Federal Regulatory Matters, NYNEX, to Donna Searcy, Secretary, FCC, filed June 14, 1993.

²⁷ There can be no question that it is the discounted LEC rates that represent the "competition" for CAPs, since the LECs will use these rates to compete with CAPs in most cases. Thus, it is the overhead treatment for the discounted services that is most relevant to the pricing of collocation services.

total revenue requirement.²⁸ BA uses "direct unit costs which are equivalent to average variable costs."²⁹ USW calculated "direct" costs using similar factors, as did Ameritech, in their volume and term discount justifications.³⁰ SWB even goes so far as to admit that, with respect to its retail services "as competitive pressures increase in the marketplace, overhead levels for particular services will depend primarily upon market conditions."³¹

SWB at 5.

Each of these carriers has gone on record arguing that their definition of AVC pricing³² recovers all relevant costs and generates a contribution to other services, so long as it is their retail services they are defending. However, they want the Commission to find that it is reasonable - indeed, essential - for them to recover heavily loaded overhead in the costs of the service provided to their competitors, and even then they contend that the rates just cover costs and do not provide a "contribution." As monopoly providers, they cannot be permitted to have it both ways.

It is important in this regard that the appropriate LEC rates to consider for purposes of comparability are beyond question their term and volume discount rates. They have initiated and justified those discounts on the basis that they are necessary to respond "to

²⁸ Pacific's January 15, 1993, filing, section 1.3.

²⁹ BA January 15, 1993, filing at 3. BA uses "direct cost" as the basis for its justification, not FDC.

³⁰ USW January 15, 1993, filing at 1-2; Ameritech May 10, 1993, filing at 3-4.

³¹ The Overhead rates shown by SWB in its TRPs range up to factors of 20, while the overhead figures shown for its DS1 and DS3 services range from 1.4 to 3.9.

³² It is unclear whether there is consistency among carriers as to which costs go into AVC - In fact, no clear standard has been developed.